

excerpt from each of US Patents 3954968 and 5236800; showing that the disclosed and claimed pheromones are well known in the chemical arts to be "liquids" and not solids.

Thus, Page 191 of Hawley shows the structure of butyl sorbate, and the excerpt from US 5236800 describes butyl sorbate as an oil (liquid). Page 328 of Hawley shows cue-lure to be a liquid. Page 724 of Hawley shows malathion to be a liquid. Page 735 of Hawley shows medlure to be a liquid. Page 768 of Hawley shows methyl eugenol to be a liquid. Page 1033 of Hawley shows siglure to be a liquid. Page 1180 of Hawley shows trimedlure to be a liquid. The excerpt from US 3954968 shows grandlure and describes grandlure as an oil (liquid).

Hence, it is not seen wherein the reissue declaration is defective. As the declaration points out on Page 4, "Dr. Friedman stated, that to the best of his knowledge, all of the pheromones and attractants disclosed in US 4,855,127 were not solid but liquid". Since that fact is common knowledge, as indicated in the attached enclosures of Hawley etc., no "test data or other evidence" would be required.

Reconsideration of this ground of rejection is therefore requested.

Reconsideration of the rejection of Claims 1-19 under Section 112 as being indefinite, confusing, and based on an insufficient disclosure, is requested, in view of the evidence of common knowledge explained above. No confusion is apparent to applicants. Thus, US 4855127 in Column 9 lines 1-3, clearly states that the functional material can be a liquid or a solid. Various categories of functional materials are described such as pheromones and pigments. The nature of the functional material is further elucidated in Column 2 lines 64-67 as including "water insoluble organic liquids and solids"; and in Column 5 lines 24-26 as including a "liquid and solid".

While only liquid pheromones are actually described in US 4855127, it is not seen that the omission of an enumeration of solid pheromones (where they do exist), would render the original disclosure insufficient. This is for the reason that, the original description in US 4855127 in Column 9 lines 1-5, covers various types of functional materials other than pheromones. Thus, pigments are mentioned as one of the functional materials, and pigments are well known in the art to exist as a dry powder (solid). Hence, this ground of rejection should be withdrawn.

The Examiner's comment on Page 4 of the Office Action in lines 5-7, that "liquid pheromones could not be cut into plugs or cylinders" is not well taken; since US 4855127 in Column 5 lines 34-49, clearly explains the conversion of liquid functional materials into free flowing solids by entrapment and incorporation of the liquid functional material into the polymer.

Claims 1-19 have been rejected under Section 103 as being unpatentable over the British Patent GB 1336495 (Ciba-Geigy). The claims differ from the British Patent in calling for a composition that is a polymer which is "cross-linked"; and a polymer in which the pheromone is "entrapped" in the polymer by "being polymerized in situ" with the monomers making up the polymer. These features are not taught in the British Patent.

Thus, in contrast to the claimed composition, in which a liquid pheromone functional material is "entrapped" in a "cross-linked" polymer by "being polymerized in situ" with the monomers of the polymer, the British Patent first prepares the polymer separately from the liquid functional material, and then places the separately prepared polymer in a container in contact with the liquid functional material. According to the

British Patent, the container is then sealed by welding the closure of the container, and the polymer and the liquid functional material are stored in the container for a minimum storage time of 3 to 30 days. Thus, no entrapment by in situ polymerization is described by this reference.

There is furthermore nothing in the British Patent to indicate that the polymer is "cross-linked", as recited in Claims 1 and 15-19. Thus, none of the monomers described in the British Patent on Page 4, in the right hand column in lines 90-121, correspond to the cross-linking monomers described in US 4855127 in Column 3 lines 13-36. According to the invention, a monofunctional monomer is combined with a difunctional monomer. Applicants fail to see wherein the British Patent teaches this concept as set forth in Claims 1-4 and 15-19.

Finally, it is pointed out that Claims 1 and 18 call for a "pheromone" to be entrapped in the polymer. Claims 13-17 and 19, call for particular pheromone compounds. The British Patent does not disclose pheromones or any of the particular compounds recited in Claims 13-17 and 19.

In view of the several differences between the claimed composition and what is taught in the British Patent, it is not seen wherein "the instant invention is obvious" as concluded by the Examiner.

Serial No.: 08/058,163
Docket No.: DC 3914

In view of the above, the claims distinguish over the cited reference for the reasons stated, and the Examiner is respectfully requested to withdraw the objections and the rejections in this application and pass the case to issue.

Respectfully submitted,

DOW CORNING CORPORATION



Jim L. De Cesare
Attorney of Record
Reg. No. 27979
Telephone (517) 496-4235

JLD/ldj

Enclosure:

CERTIFICATE OF MAILING (37 CFR 1.8.8a)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal service on the date shown below with sufficient postage as first class mail in an envelope addressed to the: Commissioner of Patents & Trademarks, Washington, D.C. 20231.

Date: 5/23/94

Jim L. DeCesare

